

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 40934 of 2013

(Arising out of Order-in-Appeal No. 41/2013-S.T. dated 25.02.2013 passed by the Commissioner of Customs and Central Excise (Appeals), No. 1, Foulk's Compound, Anai Medu, Salem – 636 001)

M/s. Glenworth Estate Limited

: Appellant

Registered Office: 68, Cathedral Road,
Gopalapuram, Chennai – 600 086

VERSUS

**The Commissioner of Central Excise and
Service Tax**

: Respondent

No. 1, Foulk's Compound, Anai Medu,
Salem – 636 001

APPEARANCE:

Ms. Pavithra M., Advocate for the Appellant

Shri M. Ambe, Deputy Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 40350 / 2023

DATE OF HEARING: 21.04.2023

DATE OF DECISION: 26.05.2023

Order : [Per Hon'ble Mr. P. Dinesha]

This appeal is filed against the Order-in-Appeal No. 41/2013-S.T. dated 25.02.2013 passed by the Commissioner (Appeals), Salem, whereby the demand, *inter alia*, of Service Tax has been upheld.

2. Ms. Pavithra M., Learned Advocate, appeared for the appellant and Shri M. Ambe, Learned Deputy Commissioner appeared for the respondent.

3.1 Brief undisputed facts, as could be gathered from the impugned Order-in-Appeal, Order-in-Original, etc., are that the appellant is manufacturing 'Black Tea' falling under Chapter Sub-Heading 09024060 of the First Schedule to the Central Excise Tariff Act (CETA), 1985. It appears that the appellant had engaged foreign agents to help the appellant in promoting / marketing / sale of such manufactured Black Tea in foreign countries, for which they were paid commission. This was held to be falling under "business auxiliary service" as per Rule 2(i)(d)(iv) of the Service Tax Rules, 1994, by terming the same as import of service in terms of the Taxation of Service (Provided Outside India and Received in India) Rules, 2006 read with Section 66A of the Finance Act, 1994.

3.2 Consequent thereto, they were alleged to be liable to pay Service Tax and the appellant, not having remitted the Service Tax, the same came to be proposed to be demanded vide Show Cause Notice C. No. V/BAS/30/17/2011-ST(ADJ) dated 27.06.2011 by the Assistant Commissioner, Coonoor Division. It also appears that while issuing the said Show Cause Notice, the larger period under Section 73(1) of the Finance Act, 1994 was invoked, thereby proposing *inter alia* to demand the Service Tax on the business auxiliary service rendered by the appellant during 2007-08 to 2009-10.

3.3 It appears that the appellant replied to the above Show Cause Notice denying any Service Tax liability and claiming exemption in terms of Notification No. 13/2003-S.T. dated 20.06.2003, as amended by Notification No. 08/2004-S.T. dated 09.07.2004, whereby business auxiliary service provided by a commission agent in relation to sale or purchase of agricultural produce was exempted. They also appear to have *inter alia* contended that Tea, *per se*, being an agricultural produce, stands covered in the definition of "agricultural produce" as defined under Notification No. 08/2004 *ibid*.

4. The Adjudicating Authority, however, appears to have not accepted the pleadings of the appellant, consequent to which the Order-in-Original No. 04/2012 dated 22.02.2012 came to be passed, thereby confirming the demands proposed in the Show Cause Notice.

5. It appears that the appellant preferred an appeal before the First Appellate Authority by reiterating the grounds urged before the Adjudicating Authority, but however, even the Commissioner (Appeals) having dismissed their appeal vide Order-in-Appeal No. 41/2013-S.T. dated 25.02.2013, the present appeal has been filed before this forum.

6. We have heard the rival contentions and we have perused the orders of lower authorities as well as the documents placed on record. After hearing both sides, we find that the only issue to be decided by us is: whether the appellant is eligible to exemption as claimed by it?

7.1 Notification No. 08/2004-S.T. dated 09.07.2004 came to be issued by amending various Notifications and one of such Notifications being Notification No. 13/2003-S.T. dated 20.06.2003, to which an amendment was brought in vide this Notification, to the following effect: -

S. No.	Notification No. and date	Amendments
(1)	(2)	(3)
..
2.	13/2003-Service Tax, dated the 20th June, 2003 [G.S.R. 504 (E) dated the 20th June, 2003]	In the said notification,- (i) in the preamble, for the words "commission agent from the service tax leviable thereon under sub-section (2) of section 66 of the said Act", the words "commission agent in relation to sale or purchase of agricultural produce from the service tax leviable thereon under section 66 of the said Act" shall be substituted; . . .

		<p>"<i>Explanation.</i> - For the purposes of this notification, -</p> <p>(i) "commission agent" means a person who causes sale or purchase of goods, on behalf of another person for a consideration which is based on the quantum of such sale or purchase.</p> <p>(ii) "agricultural produce" means any produce resulting from cultivation or plantation, on which either no further processing is done or such processing is done by the cultivator like tending, pruning, cutting, harvesting, drying which does not alter its essential characteristics but makes it only marketable and includes all cereals, pulses, fruits, nuts and vegetables, spices, copra, sugar cane, jaggery, raw vegetable fibres such as cotton, flax, jute, indigo, unmanufactured tobacco, betel leaves, tendu leaves, rice, coffee and tea but does not include manufactured products such as sugar, edible oils, processed food and processed tobacco."</p> <p>...</p>
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(Emphasis supplied by us in bold)

7.2 From a reading of the meaning, as provided in the above Notification, we find, as the same is also undisputed by either of parties, *inter alia*, that 'coffee and tea' would get covered under the meaning of agricultural produce.

8. The impugned Order-in-Appeal has upheld the denial of benefit of the above Notifications on the ground that 'Black Tea' is manufactured by the appellant after multiple processes wherein green tea leaf is converted into Black Tea, which would fall under Chapter 9 of the CETA, 1985 and that the same would no longer remain an agricultural produce of green leaf tea. It has also been held that the same is a commercially different product having distinct name, character and usage as well. The First Appellate Authority has also referred to various decisions to hold that the manufacture would result in bringing into existence a new substance since the same is a result of one

or more processes through which a different article would emerge; that Black Tea is capable of being marketed as such and is known in the market as having a distinct identity and therefore, Black Tea could not be considered as an agricultural produce within the definition or meaning under Notification No. 13/2003-S.T. dated 20.06.2003 as amended vide Notification No. 08/2004-S.T. dated 09.07.2004.

9. We find that it is too difficult for us to agree with the above findings of the First Appellate Authority for the following reasons.

10.1 The meaning of "agricultural produce", as extracted in the above paragraphs per Notification No. 08/2004 *ibid.* undoubtedly covers, *inter alia*, Tea, but, as specified therein, **does not include manufactured products such as sugar, edible oils, processed food and processed tobacco**. Therefore, the activity of manufacture is limited to products such as sugar, edible oils, processed food and processed tobacco and nothing beyond that.

10.2 We find that the production of Black Tea involves processes for which there is no bar in the said Notification. Further, the said Notification does not distinguish between Tea or Green Tea or Black Tea, and it is also well understood that there is no alteration to the essential characteristic other than, perhaps, making it marketable as either Green Tea or Black Tea.

10.3 In our considered view, even the processes involved in converting Green Tea into Black Tea does not alter the basic characteristic of the Tea as such and the same could not be considered as a non-agricultural product under any stretch of imagination.

11. In view of the above, therefore, we are of the considered view that the demand raised against the appellant is not sustainable, for which reason the impugned order is set aside.

12. The appeal is allowed with consequential benefits, if any, as per law.

(Order pronounced in the open court on **26.05.2023**)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd